Aramark Corporation *and* Florida Public Employees Council 79, AFSCME. Case 12–CA–18704

June 13, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge and amended charge filed on March 31 and April 14, 1997, the General Counsel of the National Labor Relations Board issued a complaint on April 22, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 12–RC–8041. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 19, 1997, the General Counsel filed a Motion for Summary Judgment. On May 20, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response and a Cross-Motion for Summary Judgment.

Ruling on Motions for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's assertion of jurisdiction over the Respondent's employees in the representation proceeding. The Respondent urges the Board to reexamine its holding in *Management Training Corp.*, 317 NLRB 1355 (1995), and its assertion of jurisdiction in the case at hand.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. Although the Respondent urges us to reexamine the Board's holding in *Management Training*, we decline to do so.[1] We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the General Counsel's Motion for Summary Judgment and deny the Respondent's Cross-Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with an office and place of business in Jacksonville, Florida, has been engaged in the nationwide distribution and sale of food and related services at various institutions throughout the United States, including managing the food service operation of the Duval County School Board. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of $500,000 and purchased and received at its Florida locations goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Florida. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held February 28, 1997, the Union was certified on March 19, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time cooks, cashiers, food service assistants, including individuals performing the duties of truck driver, lead food service assistants (lead persons), employed by the Employer pursuant to its operation of the Duval County School Board food service; but excluding all office clerical employees, professional employees, food service managers, food service director, assistant food service directors, food service supervisors, marketing employees, skilled maintenance employees, on-call employees, cafeteria director, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

[1] We note that the validity of the Board's decision in *Management Training* has recently been upheld by the Fourth and Sixth Circuits. See *Pikeville United Methodist Hospital of Kentucky v. Steelworkers*, 109 F.3d 1146 (6th Cir. 1997); and *Teledyne Economic Development Corp. v NLRB*, 108 F.3d 56 (4th Cir. 1997).

[2] Member Higgins notes that he dissented in part in the representation proceeding and would have granted the Employer's request for review to reconsider the Board's continued adherence to *Management Training*. However, he agrees with his colleagues that the Respondent has raised no new issues in this "technical" 8(a)(5) proceeding warranting a hearing.

B. *Refusal to Bargain*

Since March 10, 1997, the Union has requested the Respondent to bargain, and, since March 11, 1997, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after March 11, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Aramark Corporation, Jacksonville, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Florida Public Employees Council 79, AFSCME as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time cooks, cashiers, food service assistants, including individuals performing the duties of truck driver, lead food service assistants (lead persons), employed by the Employer pursuant to its operation of the Duval County School Board food service; but excluding all office clerical employees, professional employees, food service managers, food service director, assistant food service directors, food service supervisors, marketing employees, skilled maintenance employees, on-call employees, cafeteria director, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Jacksonville, Florida, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 31, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Florida Public Employees Council 79, AFSCME as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time cooks, cashiers, food service assistants, including individuals performing the duties of truck driver, lead food service assistants (lead persons), employed by us pursuant to our operation of the Duval County School Board food service; but excluding all office clerical employees, professional employees, food service managers, food service director, assistant food service directors, food service supervisors, marketing employees, skilled maintenance employees, on-call employees, cafeteria director, guards and supervisors as defined in the Act.

ARAMARK CORPORATION